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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORKS OF THE COMMISSION

Letter dated 3 April 1995 from the permanent Representative of Turkey to the United Nations Office at Geneva addressed to the High Commissioner for Human Rights

I have the honour to enclose herewith a note entitled "Views of the Government of the Republic of Turkey on the resolution entitled 'Human rights and terrorism'" adopted by the Commission on Human Rights on 3 March 1995.

I should be grateful to you if the said note could be circulated as an official document of the United Nations and be made available to all thematic special rapporteurs and working groups.

(Signed) Gündüz AKTAN
Ambassador

Views of the Government of the Republic of Turkey on the resolution entitled "Human rights and terrorism" [1995/43] adopted by the Commission on Human Rights on 3 March 1995

1. The adoption of the resolution entitled "Human rights and terrorism" by the Commission on Human Rights is a positive development. We view this resolution as a new step forward in the positions adopted by relevant United Nations forums with regard to the issue of terrorism.

2. The seventh preambular paragraph of the resolution reads as follows:

> "Deeply concerned at the gross violations of human rights perpetrated by terrorist groups,"

This provision is identical to the one in resolution 1994/46 adopted last year by this Commission. The same provision is repeated in the preambular parts of General Assembly resolutions 48/122 and 49/185. On the other hand, General Assembly resolutions 44/29 and 46/51 each embody the following provision as operative paragraph 9:

> "9. Expresses concern at the growing and dangerous links between terrorist groups, drug traffickers and their paramilitary gangs, which have resorted to all types of violence, thus endangering the constitutional order of States and violating basic human rights;"

The same paragraph appears as the fifth preambular paragraph of the Declaration on Measures to Eliminate International Terrorism adopted by the General Assembly (resolution 49/60). The Sub-Commission on Prevention of Discrimination and Protection of Minorities stipulates in its resolution 1993/13 on "Consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population", as the third preambular paragraph:

> "Condemning all acts, methods and practices of terrorism in all its forms and manifestations as gross violations of human rights,"

3. In its explanation of vote after the adoption of the draft resolution "Human rights and terrorism" (E/CN.4/1995/L.58), the representative of France stated in the name of the member States of the European Union that only the acts attributable to the States could be considered as violations, that the seventh preambular paragraph diverted from the language agreed in Vienna (Vienna Declaration and Programme of Action), that it made its reservation on this point and that the commentaries made by special rapporteurs and working groups on the resolution adopted last year on the same subject accommodated their view, etc.

4. The Mission of Turkey wishes to recall that the European Union members had made no reservations on the preambular or operative paragraphs of General Assembly resolutions 46/51 and 44/29, Assembly resolution 48/122 and Commission resolution 1994/46 which contain provisions to the effect that terrorism is a human rights violation.

5. In international humanitarian law, especially in the Additional Protocol I to the Geneva Conventions of 12 August 1949, article 51, and the Additional Protocol II, article 13, "Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited". In the first sentence of the second paragraph of these articles it is stated that "The civilian population as such, as well as individual civilians, shall not be the object of attack." Article 85 (Repression of breaches of this Protocol), paragraphs 3 (a) and (b), of Additional Protocol I state that "making the civilian population or individual civilians the object of attack" and "launching an indiscriminate attack affecting the civilian population" are grave breaches of the Protocol. Hence, terrorist acts are considered grave breaches by international humanitarian law. On the other hand, neither article 3 common to the four Geneva Conventions nor article 4 of Additional Protocol II, which pronounces acts of terrorism as prohibited at any time and in any place whatsoever, distinguishes States from armed groups in this respect. The United Nations system in General Assembly resolutions starting with 2444 (XXIII) through 2597 (XXIV), 2674 (XXV), 2676 (XXV), 2677 (XXV), 2852 (XXVI), 2853 (XXVI), 3032 (XXVII) to 3319 (XXIX), all entitled "Respect for human rights in armed conflicts" consider violations of humanitarian law as human rights violations. In line with this approach, the United Nations human rights system treated breaches of humanitarian law and human rights violations, especially in non-international conflicts, on an equal footing and in an interchangeable manner without distinguishing their authors as States, groups or individuals.

6. The consideration of terrorist acts, methods and practices as violations of human rights does not ascribe legal status to armed groups which commit them. On the contrary, article 13 of the First and Second Geneva Conventions, and article 4 of the Third Geneva Convention, paragraph 2 (d), stipulate that "conducting ... operations in accordance with the laws and customs of war" is a sine qua non condition for the application of the Conventions to "members of other militias and members of other volunteer corps, including those of organized resistance movements", hence attributing to them the status of subject of international humanitarian law. By contrast, those who do not comply with the laws and customs of war, including those who resort to terrorism, cannot enjoy any status. As a result, the equation of terrorism with human rights violation, especially in internal strife, is lawful and cannot be rejected on the ground that such an approach attributes status to terrorists.

7. A reservation made by a group of countries on any part of a resolution which is unanimously adopted by a United Nations body does not change the meaning or the effect of the provisions of that resolution. Furthermore, special rapporteurs and working groups are not authorized to comment on the provisions of such resolutions in any manner which changes their meaning or annuls their effect. They are duty-bound to implement these provisions in spirit and letter. The Permanent Mission of Turkey will closely follow the matter with these special rapporteurs and working groups. It wishes to state that its cooperation with them is conditional on the way in which they comply with all the provisions of the resolutions stated above.